

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TERRANCE N. HAYNES,

Defendant-Appellant.

UNPUBLISHED

July 27, 2001

No. 224952

Wayne Circuit Court

LC No. 99-004544

Before: Wilder, P.J., and Hood and Griffin, JJ.

MEMORANDUM.

Following a jury trial, defendant was convicted of second-degree home invasion, MCL 750.110a(3), and the trial court sentenced him to five to fifteen years' imprisonment. Defendant appeals as of right. We affirm.

On appeal, defendant contends that two instructional errors require reversal of his conviction. First, he argues that the trial court's failure to give a specific intent instruction constituted prejudicial error entitling him to a new trial. While defendant is correct that home invasion is a specific intent crime, see *People v Hunt (After Remand)*, 214 Mich App 313, 316; 542 NW2d 609 (1995), there is some authority for the proposition that an instruction on specific intent does not state an element of the offense. See *People v Yarborough*, 131 Mich App 579, 581; 345 NW2d 650 (1983), overruled on other grounds 460 Mich 750, 766 n 14. Assuming without deciding that it is an element, defendant has forfeited this claim of constitutional error. Because he did not object to the lack of a specific intent instruction, there must have been plain error causing prejudice or seriously affecting the fairness, integrity, or public reputation of judicial proceedings to avoid forfeiture. *People v Carines*, 460 Mich 750, 763, 773; 597 NW2d 130 (1999). Defendant has failed to establish such prejudice in this case. The defense theory was that someone else committed the offense and specific intent was therefore not in issue at trial. In the absence of any prejudice to defendant, he is not entitled to relief.

We also reject defendant's argument that the trial court erred in failing to sua sponte instruct the jury on the defense of alibi. Although the testimony of defendant's mother was in the nature of alibi testimony, the defense theory was misidentification. Furthermore, a trial court's failure to give an unrequested alibi instruction is not error requiring reversal where proper instruction is given on the elements of the offense and on the requirement that the prosecution must prove each element beyond a reasonable doubt. *People v Burden*, 395 Mich 462, 467; 236

NW2d 505 (1975) (opinion of T.G. Kavanaugh, C.J.); *People v Sabin (On Second Remand)*, 242 Mich App 656, 658; 620 NW2d 19 (2000). The jury in this case was adequately instructed on the elements of the offense and the prosecutor's burden of proof. We therefore decline to reverse on this basis.

Affirmed.

/s/ Kurtis T. Wilder

/s/ Harold Hood

/s/ Richard Allen Griffin